

**(2020) 01 JH CK 0134**

**In the Jharkhand High Court**

**Case No : Criminal Appeal (D.B.) No. 512 Of 2001**

Lakhan Pattar Munda

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

**Date of Decision : 13-01-2020**

**Acts Referred:**

Indian Penal Code, 1860 — Section 34, 300, 302, 304, 304(I), 323

**Citation : (2020) 01 JH CK 0134**

**Hon'ble Judges : Shree Chandrashekhar, J; Ratnaker Bhengra, J**

**Bench : Divison Bench**

**Advocate : Peeyush Krishna Chaudhary, Rukmini Kumari, Amrendra Pradhan, Nehala Sharmin**

**Final Decision : Allowed**

## Judgement

Shree Chandrashekhar, J

1. The appellant, namely, Lakhan Pattar Munda and Budhu Pattar Munda were sentenced to RI for one year under section 323 of the Indian Penal

Code and appellant Shibu Pattar Munda was sentenced to RI for life under section 302 of the Indian Penal Code. The appellants were released on bail

vide order dated 04.02.2008. The appellant, namely, Lakhan Pattar Munda has served the sentence in the meantime.

2. During pendency of this criminal appeal, the appellant no. 1, namely, Budhu Pattar Munda has passed away and accordingly Cr. Appeal (DB) No.

512 of 2001 qua the appellant no. 1, namely, Budhu Pattar Munda has abated vide order dated 18.07.2019.

3. Vide order dated 26.06.2019, Mr. Amrendra Pradhan, the learned counsel was appointed as Amicus to argue this criminal appeal.

4. Mr. Amrendra Pradhan, the learned Amicus states that he has no instruction to

press this criminal appeal on behalf of Lakhan Pattar Munda.

5. Since the appellant, namely, Lakhan Pattar Munda has served the sentence, this criminal appeal qua the appellant no. 2, namely, Lakhan Pattar Munda has been rendered infructuous.

6. The prosecution's case has been disclosed by Mahendra Pattar Munda in his fardbeyan which was recorded on 22.09.1987 at about 7:00-7:30 p.m.

at village Sarlonga. On the basis of his fardbeyan, Tamar P.S. Case No. 65 of 1987 was lodged against Budhu Pattar Munda, Lakhan Pattar Munda,

Shibu Pattar Munda and Dubraj Pattar Munda under section 302/34 of the Indian Penal Code. During the trial the prosecution has examined seven witnesses; the informant is PW-1.

7. In his fardbeyan, the informant has stated that in the evening of 22.09.1987 he was at home. At about 8:05 a.m. he heard hulla outside his house.

He saw the accused persons assaulting his son Lal Singh Pattar Munda with fists. At that time, Prem Nath Singh Munda and Mrityunjay Swansi came

there and pacified them. However, in the meantime Shibu Pattar Munda brought one wooden fara ( a piece of wood) from his house and assaulted his

son on his head, whereupon his son fell on the ground. They gave first aid to Lal Singh Pattar Munda but he succumbed to the injuries. The informant

has stated that he had land dispute with the appellants.

8. In the court the informant has stated about a quarrel between his son and the appellants and assault by the appellants on his son. The prosecution

witnesses Mrityunjay Swansi PW-4 and Prem Nath Singh Munda PW-6 have supported the prosecution's case. They have stated about quarrel

between the appellants and Lal Singh Pattar Munda and assault by Shibu Pattar Munda on his head by a wooden log. The learned Sessions Judge has

found testimony of PW-4 and PW-6 reliable and trustworthy. Their evidence is corroborated by the medical evidence.

9. Dr. B.P. Chourasia PW-7 who has conducted the postmortem examination on 23.09.1987 has found one lacerated wound of the size 1 cm x

1½ cm, skull deep on right parietal region of head of Lal Singh Pattar Munda. There was a corresponding defused contusion on the parietal

temporal skull of the deceased. The doctor has found fracture on right temporal parietal bone and in his opinion the injuries were ante-mortem in

nature and caused by hard and blunt substance.

10. From the aforesaid evidences laid by the prosecution assault by Shibu Pattar Munda on Lal Singh Pattar Munda is established.

11. However, the question is whether Shibu Pattar Munda has rightly been convicted for murder of Lal Singh Pattar Munda.

12. The learned counsel for the appellant has contended that on the basis of the evidences laid by the prosecution, Shibu Pattar Munda is entitled for the benefit under Exception 4 to Section 300 of the Indian Penal Code.

13. Section 300 of the Indian Penal Code makes culpable homicide murder if the act by which death has been caused falls under any one of the four clauses, except in the cases falling under any one of the five exceptions. The cases falling under the exceptions under section 300 IPC are made punishable under section 304 IPC. The evidences laid by the prosecution against the appellant would disclose that the appellant is entitled for the benefit under Exception-4 to Section 300 IPC.

14. It has come in the evidence of the prosecution witnesses that initially the appellant was unarmed. The prosecution witnesses have seen the appellant and Lal Singh Pattar Munda quarreling. According to the informant there was a land dispute between him and the appellant. Shibu Pattar Munda has brought wooden log and struck one blow on the head of Lal Singh Pattar Munda upon a sudden quarrel in the heat of passion [ refer, *Deepak V. State of Uttar Pradesh*, reported in (2018)8 SCC 228].

15. In *Surinder Kumar Vs. Union Territory, Chandigarh* (1989) 2 SCC 217, the Supreme Court has indicated the situations under which an accused may be extended benefit of Exception-4 to section 300 IPC, thus:

7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant has not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal,

he would be entitled to the benefit of this exception

provided he has not acted cruelly.....â??

16. From one single blow if it is found on a vital part of the body intention to commit murder can be inferred, but then, the other attending

circumstances are also to be kept in mind. The appellant, namely, Shibu Pattar Munda has inflicted one blow on the head of Lal Singh Pattar Munda

with the wooden fara ( a piece of wood); size of which is not known. From such evidence it can be inferred that he has not acted in a cruel or unusual

manner and he has not taken undue advantage of the situation. His act was not premeditated and it was in the heat of passion that he has inflicted

blow by a wooden fara on the head of Lal Singh Pattar Munda.

17. From the prosecution's evidence it can be gathered that the act of Shibu Pattar Munda squarely falls under Exception 4 to Section 300 of the

Indian Penal Code and, accordingly, he is convicted and sentenced to RI for seven years under section 304 Part (I) of the Indian Penal Code. His

conviction under section 302 of the Indian Penal Code is set-aside.

18. Mrs. Nehala Sharmin, the learned APP states that Shibu Pattar Munda has remained in custody for more than seven years.

19. Accordingly, the appellant, namely, Shibu Pattar Munda, who is on bail, shall stand discharged of liability of the bail bonds furnished by him.

20. In the result, Cr. Appeal (DB) No. 512 of 2001 is partly allowed.

21. We appreciate the assistance rendered by Mr. Amrendra Pradhan, the learned Amicus.

22. The Secretary, Jharkhand High Court Legal Services Authority, Ranchi shall reimburse the learned Amicus on submission of the bill(s) as per the

notification dated 23.11.2017.

23. Let a copy of the judgment be transmitted to the court concerned through 'Fax'.

24. Let lower court records be transmitted to the court concerned, forthwith.